

National Indian Gaming Commission

NOTICE OF FINAL DECISION AND ORDER RESCINDING DECLINATION OF CONCURRENCE WITH VARIANCE

In the

Prairie Island Indian Community Gaming Commission Appeal to NIGC for Concurrence with Tribal Gaming Commission Variance

INTRODUCTION

The issue in this matter is whether the Acting Director of Audits for the National Indian Gaming Commission (NIGC) correctly declined to concur with a Minimum Internal Controls Standards (MICS) variance approved by the Prairie Island Gaming Commission (PIGC). The variance approved by the PIGC permits use of a digital video recording system for surveillance and added language to the definition of “sufficient clarity” in the Tribal Internal Control Standards (TICS) of the PIGC to reflect the use of digital in addition to analog technology. Following an evaluation of the record in this matter and a review of the requirements relevant to MICS variances, the Commission finds that a variance is not required. Therefore, the declination of concurrence with the variance is rescinded.

BACKGROUND

In November of 2002, the NIGC Regional Director of the St. Paul office observed the Prairie Island gaming facility’s new digital surveillance system. Record at Tab 4.¹

¹ The Record consists of the exhibits to the PIGC’s appeal.

The Director advised the Surveillance Director to apply for a variance and said he would support the variance. Id. On December 4, 2002, the Surveillance Director submitted a request for a variance to the PIGC. Record at Tab 1B. The request included supporting documentation. Record at Tabs 1C and 1D. On February 12, 2003, the PIGC approved the variance and a recommended change in the PIGC TICS definition of “sufficient clarity” to reflect the use of digital video recorders that achieve clarity equal to or better than analog video recording at twenty frames per second. Record at Tab 1B. Through its attorney, the PIGC submitted its request for NIGC concurrence with the variance on February 28, 2003. Record at Tab 1 with four exhibits.

On April 7, 2003, the NIGC’s Acting Director of Audits declined to concur with the PIGC’s approval of the variance. On July 2, 2003, counsel for the PIGC resubmitted its request for concurrence with the variance and responded to the objections described by the Acting Director of Audits in his April 7, 2003, letter. Record at Tab 11. In a September 9, 2003, letter (mistakenly dated August 9, 2003), the Acting Director of Audits sustained his initial decision to decline concurrence with the variance that the PIGC approved. Record at Tab 16. The appeal was received at NIGC on October 9, 2003.

APPLICABLE LAW AND REGULATIONS

Tribal gaming operations are required to establish TICS that provide “a level of control that equals or exceeds” the NIGC MICS. 25 C.F.R. §§ 542.3(c)(1). Therefore, the TICS must require a surveillance system that meets the NIGC MICS described in the NIGC regulations at 25 C.F.R. § 543.43. Subsections 543.43 (k) – (u) concern surveillance observations of bingo, card games, progressive card games, keno, pari-

mutuel, table games, progressive table games, gaming machines, cage and vault, and currency and coin. The standard for surveillance of all of these operations is “sufficient clarity.”

The NIGC MICS definition of “sufficient clarity” is “use of monitoring and recording at a minimum of twenty (20) frames per second. Multiplexer tape recordings are insufficient to satisfy the requirement of sufficient clarity.” 25 C.F.R. § 542.2. A variance is required when a gaming operation desires to replace this or any other standard. 25 C.F.R. § 542.18(a). Furthermore, if the gaming operation wishes to vary from the NIGC MICS standard, the tribal gaming regulatory authority must approve a variance if it determines that the variance will achieve a level of control sufficient to accomplish the purpose of the standard it is to replace. 25 C.F.R. § 542.18(a)(1). This variance and supporting documentation must be submitted to the NIGC who must concur in the variance or object to its approval. 25 C.F.R. § 542.18(b).

ANALYSIS

A variance is a substitution in the TICS for an NIGC MICS standard. The standard at issue is “sufficient clarity,” defined in section 542.2 of the NIGC MICS as the “use of monitoring and recording at a minimum of twenty (20) frames per second. Multiplexer tape recordings are insufficient to satisfy the requirement of sufficient clarity.” The language adopted by the PIGC TICS is “use of monitoring and recording at a minimum of twenty (20) frames per second, *or the use of digital video recorders which record and display images with a minimum resolution of 2CIF (640 pixels x 240 pixels) and operated at a speed that records and represents activity with clarity equal to or better than analog recording at 20 frames per second.* Multiplexer tape recordings are

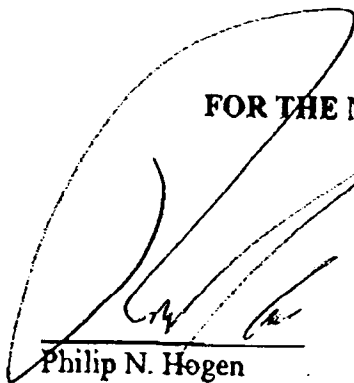
insufficient to satisfy the requirement of sufficient clarity." (Emphasis added.) The PIGC retained the NIGC MICS standard and added the emphasized language to reflect the use of digital video recording. The supplementary language in the PIGC TICS establishes additional requirements while providing a level of control that equals or exceeds the NIGC control. Consequently, no variance is required.

In reaching this decision, we have not considered or determined whether the digital video recording surveillance system meets or exceeds the NIGC MICS. It remains the primary regulatory responsibility of the Prairie Island Indian Community and the PIGC to monitor the system and determine that it actually meets or exceeds the standard of "sufficient clarity" established in the NIGC MICS.

CONCLUSION

Since the language added by the PIGC to the TICS meets or exceeds the protection required by the NIGC MICS, no variance is necessary. Therefore, it is ORDERED that the declination of concurrence with the variance is RESCINDED.

FOR THE NATIONAL INDIAN GAMING COMMISSION:



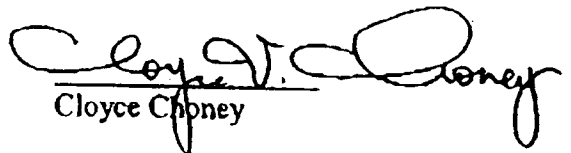
Philip N. Hogen

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